

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 46

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte K. REED JENTZSCH, OTIS H. WILLOUGHBY and
GARY A. BALDWIN

Appeal No. 97-3757
Application 08/298,351¹

ON BRIEF

Before CALVERT, COHEN and CRAWFORD, **Administrative Patent Judges**.

CALVERT, **Administrative Patent Judge**.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 53, 56
to 64, 67 to 75, 78 to 87 and 90 to 111, all of the claims
remaining in the application.

¹Application for patent filed August 29, 1994. According to appellants, this application is a continuation of application no. 08/031,059, filed March 2, 1993, abandoned, which is a continuation of application 07/600,942, filed October 22, 1990, abandoned, which is a continuation of application 07/505,618, filed April 6, 1990, abandoned.

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The claims on appeal are reproduced in Appendix A of appellants' brief.

The reference applied in the final rejection is:

Claydon et al. (Claydon) 4,885,924 Dec. 12, 1989

Claims 53, 56 to 64, 67 to 75, 78 to 87 and 90 to 111 stand finally rejected as anticipated by Claydon, under 35 U.S.C. § 102(b).

The examiner takes the position that the appealed claims are all readable on the container arrangement shown in Fig. 10 of Claydon.

We will first consider the four independent claims on appeal, claims 53, 64, 75 and 87.

Claim 53

Claim 53 recites, *inter alia*, a panel positioning portion positioned between the supporting surface and the center panel and comprising (1) a second part which extends outwardly from its lower end to its upper end, and (2) a third part, above the second part, extending inwardly from its lower end to its upper end. The claim then recites:

said lower end of said third part having a second diameter greater than said first diameter of said radially innermost part of said annular support and said upper end of said third part having a third diameter less than said first diameter of said radially innermost part of said annular support, wherein there is a discontinuity between said upper end of said third part and said center panel.

With regard to the term "discontinuity" in the penultimate line of claim 53, we do not find any such term used in connection with, for example, the description of the point at the upper end of dimension L_2 in Figs. 15 and 16². Nevertheless, we understand from appellants' brief at pages 19 to 20 that this term refers to the fact that in Fig. 16, for example, the upper end of the third part 88 of the panel positioning portion is differentiated from center panel 38, presumably by the change in radius (from R_{PR} to R_{SR}).

In attempting to read the above-noted claim recitations on Claydon's Fig. 10, one would have to construe the claimed second part of the panel positioning portion as annular wall 5 of Claydon, and the claimed third part as part of the outer edge of

² 37 CFR 1.75(d)(1) requires that terms used in the claims must find clear support or antecedent basis in the description. The specification should be appropriately amended to provide such antecedent basis.

Claydon's central panel 4, extending from the upper end of wall 5 to a point radially inward of the inner edge of bead 6 (in order to meet the claimed "third diameter" limitation).

However, in order to meet the final clause ("wherein . . . panel") of claim 53, at such point there would have to be a "discontinuity" between the third part and Claydon's center panel 4.

The examiner does not explain where there is any such discontinuity in the Claydon Fig. 10 container,³ and no discontinuity is evident to us, since center panel 4 extends continuously from the axis to the upper end of wall 5. Claim 53 is therefore not anticipated by Claydon, because the reference does not disclose either explicitly or inherently, every limitation of the claimed invention. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

The rejection of claim 53 will not be sustained.

Claim 64

In this claim, it is recited in the last five lines that:

³ MPEP § 1208, items 11(iii) and (v) (page 1200-17), requires that the examiner point out "where all of the specific limitations recited in the rejected claims are found in the prior art relied upon in the rejection" and "compare at least one of the rejected claims feature by feature with the prior art relied on in the rejection." That has not been done in this case.

said lower and upper end portions of said third part being defined by first and second radiuses, respectively, wherein centers of said first and second radiuses are disposed on opposite sides of a reference plane extending between said upper and lower ends of said third part.

Here again, we find no specific antecedent basis for this language in the specification⁴, but note that in Fig. 16, third part 83 is concave with a radius R_R at its upper part, and is convex with another radius (unnumbered) at its lower part. No such structure is found in Claydon's Fig. 10, and the examiner has not identified any which would meet this limitation.

The rejection of claim 64 will therefore not be sustained.

Claim 75

This claim recites, in part:

an exteriorly convexly-shaped annular support comprising an annular supporting surface, wherein a reference plane substantially contains said annular supporting surface

* * * * *

wherein a vertical distance of a radially outermost part of said center panel relative to said reference plane is significantly greater than a vertical distance of said upper end of said second part relative to said reference plane.

Fig. 10 of Claydon does not meet these limitations because in Claydon, the radially outermost part of central panel 4 and the upper end of the second part (annular wall 5) coincide, and

⁴See note 2, supra.

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therefore are at the same vertical distance from the plane at the bottom of the support surface (bead 6).

The rejection of claim 75 will not be sustained.

Claim 87

Claim 87 requires that the first and second parts of the inner wall positioned between the annular support and center panel have "different orientations relative to said vertical axis". This language is not readable on the reference because, in Claydon's Fig. 10, if the inner wall 5 were arbitrarily divided into first and second parts, those parts would both have the same orientation relative to the vertical axis of the container. The examiner does not suggest otherwise.

We therefore will not sustain the rejection of claim 87.

The Dependent Claims

Since we will not sustain the rejection under 35 U.S.C. § 102(b) of the four independent claims on appeal, it follows that the rejection on that ground of the claims dependent on these claims will likewise not be sustained.

Conclusion

The examiner's decision to reject claims 53, 56 to 64, 67 to 75, 78 to 87 and 90 to 111 is reversed.

REVERSED

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IAN A. CALVERT)	
Administrative Patent Judge)	
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IRWIN CHARLES COHEN)	BOARD OF PATENT
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